

ERNEST K. LEHMANN AND ASSOCIATES

IBLA 79-330

Decided September 11, 1979

Appeal from decision of the Oregon State Office Bureau of Land Management, declaring Nero Nos. 1-30, inclusive, mining claims void. OR MC 4960-OR MC 4989.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work  
-- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under the Federal Land Policy and Management Act of 1976, sec. 314, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claims located in 1977, must file affidavits of assessment work or notices of intention to hold the claims prior to Dec. 31 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned, and may properly be declared void.

APPEARANCES: Thomas W. Bastien, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated April 6, 1979, by the Oregon State Office, Bureau of Land Management (BLM), holding the Nero Nos. 1-30, inclusive, mining claims (OR MC-4960 through OR MC-4989, inclusive) void for failure to file either an annual assessment statement or a notice of intention to hold the claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.2-1.

All of the claims herein were located in December 1977.

[1] 43 U.S.C. § 1744(a)(1) and (2) (1976) of FLPMA and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the State Office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the

required instruments is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c), 43 CFR 3833.4(a). Since the claims were located in 1977, either evidence of assessment work or a notice of intention to hold the claims had to be filed prior to December 31, 1978.

Appellant states on appeal that the Mining Law of 1872 does not require evidence of assessment of a recorded claim in the first calendar year following the date of recording. Appellant further asserts:

Title 43, Chapter II, part 3830, Subpart 3833.2-3, form-notice of intention to hold claim requires information that states the reason that prevented the filling [sic] of an assessment affidavit (3833.2-3(e)). We have interpreted this to mean that the notice of intention is a requirement which specifically explains impedimental reasons for not performing assessment work and therefore, not filing an assessment affidavit. We did not claim for that reason. We do fully intend to hold the claims which are adjacent to several other of our valid claims in the area. [Emphasis in original.]

With respect to appellant's reference to the Mining Law of 1872, we would point out that section 1732(b) of FLPMA, specifically makes mention of section 1744 as one of those provisions of the new law (FLPMA) which amends the Mining Law of 1872. Section 1744 is unequivocal in the filing requirements it prescribes.

Appellant is correct in stating that 43 CFR 3833.2-3(e) requires "a notice of intention to hold claim" to contain data showing, inter alia, why no assessment affidavit could be filed. We are at a loss, however, to follow appellant's rationale to its conclusion that the regulation, 43 CFR 3833.2-3(e), obviates compliance with statutory mandates. Section 3833.2-3 simply describes the information a notice of intention to hold a claim is to contain. The crucial regulation is 43 CFR 3833.2-1 which requires either an affidavit of assessment work, or a notice of intention to hold claim to be filed.

Since neither of the required documents was filed, BLM properly declared the claims void. Bruce Parks, 42 IBLA 18 (1979).

Therefore, pursuant in the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge